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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

INFINITY ENERGY, INC., a  
California Corporation,  
Plaintiff,  
v.  
INFINITE ENERGY HOME  
SERVICES, INC., a California  
Corporation,  
Defendant.

Case No.  
2:21-cv-00438-WBS-KJN  
Hon. William B. Shubb

[PROPOSED] ORDER GRANTING  
DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE,  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: May 30, 2023  
Time: 1:30 p.m.  
Location: Courtroom 5

Defendant INFINITE ENERGY HOME SERVICES, Inc.'s Motion for Summary Judgment, or in the Alternative, Motion for Partial Summary Judgment ("Motion") was heard by this Court on MAY 30, 2023. Upon consideration of the papers filed in support of and in opposition to the Motion, the pertinent records and documents on file in this case, and any oral arguments presented by counsel, and for good cause shown, the Court has determined that there are no genuine issues of material fact and that Defendant INFINITE ENERGY HOME SERVICES, Inc. is entitled to judgment as a matter of law as to



1 each of Plaintiff's claims and demands for relief.

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is  
3 entitled to summary judgment on all claims and the Motion shall be  
4 granted for the following reasons:

5 To prevail on any one of their claims, Plaintiff bears the  
6 burden of establishing a likelihood of confusion. *M2 Software, Inc.*  
7 v. *Madacy Entm't*, 421 F.3d 1073, 1080 n.5 (9th Cir. 2005). To  
8 establish a likelihood of confusion, Plaintiff must offer  
9 sufficient evidence to show that a substantial portion of the  
10 consuming public is likely to be confused. *One Indus., LLC v. Jim*  
11 *O'Neal Distrib., Inc.*, 578 F.3d 1154, 1163 (9th Cir. 2009). Here,  
12 Plaintiff has presented insufficient evidence to allow any  
13 reasonable jury to find that a likelihood of confusion exists as a  
14 matter of law. Therefore, Defendant is entitled to summary judgment  
15 on each of Plaintiff's claims. Judgment is entered in favor of  
16 Defendant INFINITE ENERGY HOME SERVICES, Inc and against Plaintiff  
17 on all claims asserted in Plaintiff's First Amended Complaint.

18

19 [In the alternative] IT IS HEREBY ORDERED, ADJUDGED AND  
20 DECREED that Defendant INFINITE ENERGY HOME SERVICES, Inc. is  
21 entitled to summary judgment on all of Plaintiff's claims for  
22 monetary relief.

23 Plaintiff seeks recovery of actual damages, disgorgement of  
24 profits, attorney's fees and exemplary damages.

25 Plaintiff offered no certain evidence of the damages Plaintiff  
26 allegedly suffered. Plaintiff offered no evidence of Defendant's  
27 allegedly willful and malicious conduct. Plaintiff's Person Most  
28 Qualified also admitted that he did not have any personal knowledge

1 of Defendant's intent. Thus, Plaintiff cannot recover its actual  
2 damages (as there is no objective evidence showing that it suffered  
3 any damages) or disgorgement profits under the theory that  
4 Defendant's profits are a measure of Plaintiff's damages. See *Edge*  
5 *Games, LLC v. Houghton Mifflin Harcourt Publishing Co.*, No. EDCV  
6 13 02123 VAP (DTBx), 2015 WL 3498607 (C.D. Cal. June 2, 2015).

7 Plaintiff also cannot establish Defendant "willfully"  
8 infringed Plaintiff's servicemark, as Plaintiff has put forth no  
9 evidence that Defendant chose its tradename in an attempt to exploit  
10 any advantage of Plaintiff's servicemark. As a matter of law,  
11 Plaintiff is not entitled to damages it seeks to recover, and  
12 Defendant's partial motion for summary judgment on all claims for  
13 monetary relief is granted.

14 Partial judgment is entered in favor of Defendant INFINITE  
15 ENERGY HOME SERVICES, Inc. and against Plaintiff's claims for  
16 monetary relief. Plaintiff's remaining reliefs sought in  
17 Plaintiff's prayer for relief are claims at equity, and therefore  
18 Plaintiff's Demand for Jury Trial is stricken from the First Amended  
19 Complaint.

20  
21 **IT IS SO ORDERED.**

22  
23 DATED: \_\_\_\_\_

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28 HONORABLE WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE